



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>04/07/03</b>	Bill No:	<b>SB 1062</b>
Tax:	<b>Property</b>	Author:	<b>Committee on Revenue and Taxation</b>
Board Position:	<b>Board Sponsored</b>	Related Bills:	

### BILL SUMMARY

This Board of Equalization sponsored omnibus property tax bill would:

- Allow a base year value transfer to be granted on a prospective basis after the three-year time period for filing a claim has expired. §69.5
- Eliminate the requirement that a special notation be made on the assessment roll being prepared for a pending supplemental assessment. §75.30
- Allow supplemental and escape assessment notices to be Board-approved rather than Board-prescribed. §75.31, §534
- Replace the title "Executive Secretary" with "Executive Director." §155, §1841, §1609.5
- Increase the minimum amount of damage required to qualify for property tax deferral from \$5,000 to \$10,000, consistent with the \$10,000 level for disaster relief under Section 170. §194
- Correct a cross reference error to Section 61. §218
- Repeal an obsolete section of law related to the lien date change over from March 1 to January 1 for the 1997-98 fiscal year for certain open space and timberland preserve zone contracts. §401.9
- Change the date by which the Board is required to publish interest rate components used to value enforceably restricted open-space land and restricted historical property, and delete obsolete language. §423, §439.2
- Allow the Board to be reimbursed for its full costs when employees are subpoenaed to attend assessment appeals hearings §1609.5
- Repeal obsolete sections of the Property Taxes Law. §5098 and §5098.5

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**ANALYSIS****Base Year Value Transfers***Revenue and Taxation Code Section 69.5***Current Law**

Revenue and Taxation Code Section 69.5 provides that persons over the age of 55 years and disabled persons may transfer, subject to many conditions and limitations, the base year value of their primary residence to a newly acquired replacement residence. Among the limitations on obtaining relief is the requirement that the property owner file a claim form with the assessor. Current law requires that the claim be filed within three years of the date the replacement dwelling was purchased or newly constructed.

**Proposed Law**

This bill would amend Section 69.5 of the Revenue and Taxation Code to allow the assessor to grant, on a prospective basis, a base year value transfer at any time the claim is filed after the three year period. That is, if a claim is made after the customary three year filing period, then the base year value transfer will be granted on the next lien date after the claim form is filed (i.e. property tax refunds are not issued for past years, but future property tax bills will reflect the lower assessed value).

**Comments**

1. **Purpose.** This provision would codify a recommendation made by the Taxpayers' Rights Advocate's Office in their 2002 Annual Report and Hearing before the Board of Equalization. Its purpose is to ensure that taxpayers are not permanently barred from receiving a constitutionally authorized benefit due to a statutory requirement.
2. **Related Legislation.** As a matter of policy, the proposed amendment is consistent with the direction the Legislature took with the parent-child exclusion in 1997 (SB 542, Ch. 941), and provides relief to a class of taxpayers, who, save for missing a filing deadline, would have qualified for the exclusion.
3. **This is a constitutionally based benefit.** Base year value transfers were enacted as a constitutional amendment by the voters of California (Propositions 60, 90 and 110). The three year period to file a claim is a statutory requirement, no such requirement exists in the Constitution.

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**Pending Supplemental Assessment Roll Notation***Revenue and Taxation Code Section 75.30***Current Law**

Section 75.30 of the Revenue and Taxation Code requires the assessor to place a notation on "the roll being prepared" (i.e., the roll for the next fiscal year) to indicate a pending supplemental assessment and to also notify the auditor, who places a notation of pending supplemental assessment on the current roll or on an attached separate document.

**Proposed Law**

This bill would repeal Section 75.30 of the Revenue and Taxation Code to eliminate the requirement that a notation that a supplemental assessment is pending on the roll being prepared.

**Background**

The assessment roll generally lists the assessed value of all property located in the county for a particular fiscal year, and includes information such as the location of the property, either by assessors parcel number or legal description, the property owner's name and mailing address and any exemptions the property is receiving.

Revenue and Taxation Code Section 1602 requires that the assessment roll, or a copy thereof, be made available for inspection by all interested parties during regular office hours. Sections 109.5 and 109.6 provide that the data included in the assessment roll may be electronically maintained so that no physical document need be prepared. But the data must be stored in a manner that can be made readily available to the public in an understandable form.

**Comments**

**Purpose.** Under the current method of electronic rolls, it is not practical to implement Section 75.30 which is basically a requirement intended for a physical paper format. Because of the lack of a physical document, the repeal of Section 75.30 generally reflects the existing practice in many county assessors' offices.

The public can determine from other data sources maintained by the assessor and available at the assessor's office regarding any pending supplemental assessments. Additionally, with respect to the property owner specifically impacted by a pending supplemental assessment, Section 75.31 requires the assessor to personally notify the assessee of the new base year value and the amount of the supplemental assessment(s). With respect to transmitting the data to the county auditor, Section 75.40 outlines the supplemental assessment information that the assessor is to transmit to the auditor.

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**Board Prescribed Forms***Revenue and Taxation Code §75.31, §534***Current Law**

The administration of the property tax requires the use of a variety of forms, notices and claims for exemptions or exclusions. Some sections of law outline the types of information that must be included in the document or provides the precise wording that must be included. Some sections of law specifically provide that the relevant form, claim, or notice for that particular section of law will be "prescribed" by the Board of Equalization. With respect to any property tax exemption enacted by statute or constitutional amendment, Revenue and Taxation Code Section 251 provides that the Board is to prescribe all procedures and forms related to the exemption. A form, notice, or claim that is "prescribed" requires that each of the 58 counties use an exact replica of the document created by the Board.

**Proposed Law**

This bill would amend Sections 75.31 and 534 of the Revenue and Taxation Code to allow supplemental assessment notice requirements and escape assessment notice requirements to be Board-approved rather than Board-prescribed.

**Background**

When a new base year value has been established for a change in ownership or completion of new construction, Revenue and Taxation Code Section 75.31 requires the assessor to send a notice of the new base year value to the assessee called a "notice of supplemental assessment." Similarly, whenever an escape assessment is made, Section 534 requires that the assessee be notified of the assessment before it becomes effective. The escape assessment notice requirements of Section 534 pre-date Proposition 13. The supplemental assessment notice requirements of Section 75.31 were added in 1983. Chapter 647, Statutes of 2000 (SB 2170), amended these two sections to require that certain additional information concerning the assessee's right to an informal review and right to appeal be included in the notice given by the assessor. It additionally amended these sections of law to require that the heretofore pre-existing notices be prescribed by the Board.

**Comments**

1. **Purpose.** Because these two forms are Board-prescribed (BOE-66 and BOE-67) it has caused an undue hardship on various counties; consequently, some of these have been unable to comply with the law. The design of some counties' notices fit the county's computer system already established and to make the counties change their systems in order to produce a notice that is the replica of the Board notice would entail an added expense. Additionally, in some cases, the computer system is tied in with the County Auditor's and County Tax Collector's Offices. So to change the Assessor's requirements would necessitate also changing the computer

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systems in the other two county offices. Thus, this bill would change the notice requirements in Sections 75.31 and 534 from Board-prescribed to Board-approved.

2. **Oversight would be retained over the content of the forms.** Property Tax Rule 252 provides that certain forms created by the county must be "approved" by the Board. These include the two notices in question here: notice of supplemental assessment and notice of escape assessment. Therefore, these two notices would still be reviewed and approved by the Board to ensure they contain the necessary information required by Section 75.31 and 534.

### **Disaster Relief**

#### *Revenue and Taxation Code Section 194*

##### **Current Law**

Property taxes may be reduced following a disaster, misfortune, or calamity in those counties where the board of supervisors has adopted an ordinance authorizing the disaster relief provisions of Revenue and Taxation Code Section 170. Disaster relief is provided by allowing the county assessor, under specified conditions, to reassess the property after the lien date to recognize the loss in a property's market value. One of these conditions is that the sum of the full cash values of the land, improvements and personalty before the damage or destruction exceeds the sum of the values after the damage by \$10,000 or more.

In addition, any property owner whose real property has been substantially damaged or destroyed in a Governor proclaimed state of emergency, and who has applied for property tax relief under Section 170, may apply to defer payment of property taxes on the next installment of the regular secured roll pursuant to Section 194 et seq. To qualify for deferral, for property receiving a homeowners' exemption, subdivision (f) of Section 194 defines "substantial disaster damage" as damage amounting to at least 10 percent of its fair market value or \$5,000, whichever is less. For all other property, the damage must be at least 20% of value

##### **Proposed Law**

This bill would amend Section 194 of the Revenue and Taxation Code to update the minimum amount of damage to qualify for property tax deferral from \$5,000 to \$10,000 consistent with the \$10,000 level for disaster relief under Section 170.

##### **Comments**

**Purpose.** This threshold amount was increased from \$5,000 to \$10,000 by SB 1181 (Chapter 407, Stats. 2001), effective January 1, 2002, and damages must be at least 20% of value. The damage threshold of \$5,000 is now outdated since the threshold to qualify for relief under Section 170 has been increased to \$10,000. Therefore, the \$5,000 threshold amount in Section 194(f) should be increased to \$10,000 to conform with the change made to Section 170 effective January 1, 2002.

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**Subpoena of BOE Employees***Revenue and Taxation Code Section 1609.5***Existing Law**

Revenue and Taxation Code Section 1609.5 provides that an employee of the Board of Equalization may be subpoenaed as a witness before a county assessment appeals board. The party requesting the subpoena is required to pay the Board two hundred dollars (\$200) per day for each day that such employee is required to remain in attendance pursuant to the subpoena.

**Proposed Law**

This bill would amend Section 1609.5 of the Revenue and Taxation Code to allow the Board to be reimbursed for its full costs when an employee is subpoenaed to attend assessment appeals hearings

**Background**

The subpoena fee was first established at \$150 when Revenue and Taxation Code Section 1609.5 was added to the code in 1974. The \$200 amount was adopted by the Legislature in 1979, effective January 1, 1980 (Stats. 1979, Ch. 516).

**Comments**

**Purpose.** The current fee of \$200 was last increased in 1979 and was intended to reimburse the Board for salary, travel and per diem expenses the employee incurred in responding to the subpoena. However, the fee has not been changed in over 23 years and it no longer reflects the Board's full costs. Generally, when a public employee is subpoenaed, the public entity is fully reimbursed for its costs. (See Government Code Section 68097.2) This bill would similarly allow the Board to recoup its full costs for employees subpoenaed to attend assessment appeals hearings, consistent with all other state employees and state agencies.

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**Open Space and Timberland Preserve Zone Contracts***Revenue and Taxation Code Section 401.9***Current Law**

Existing law provides that certain open space lands and timberland preserve zone property can receive preferential assessment resulting in a reduced assessed value. One condition of receiving this tax relief is that the property be subject to an "enforceable restriction" as to the use of the land. For the first fiscal year that the special assessment procedure is sought, Revenue and Taxation Code Section 430.5 requires that the necessary enforceable restriction be recorded "on or before the lien date" of the particular fiscal year. Section 430.5 also specifies that property owners must commence the enforceable restriction process no later than a certain date to ensure there is sufficient time to finalize and record the restriction prior to the relevant lien date.

**Proposed Law**

This bill would repeal obsolete Section 401.9 of the Property Taxes Law related to the lien date change over from March 1 to January 1 for the 1997-98 fiscal year for certain open space and timberland preserve zone contracts.

**Background**

In 1996, Section 430.5 provided that property owners could commence the enforceable restriction process up to the December 15 prior to the lien date. However, in 1995, legislation had been enacted to change the lien date from March 1 to January 1 commencing with the 1997-98 fiscal year. Thus, the lien date for the 1997-98 fiscal year would be January 1, 1997 rather than March 1, 1997. And for new open space and timberland preserve zone contracts the law permitted property owners to start the enforceable restriction process as late as December 15, 1996 but the restriction must have been recorded by January 1, 1997 -- a period of only two weeks.

In anticipation of this timing problem, Section 401.9 was added to the Revenue and Taxation Code (SB 1827, Ch. 1087, Stats. 1996, Committee on Revenue and Taxation) to ensure that property owners entering into new contracts where the enforceable restriction was recorded in the period of time between the new and old lien dates (January 1, 1997 through February 28, 1997) would be able to receive the special assessment procedures for the 1997-98 fiscal year. This section of code was relevant only to the 1997-98 fiscal year and is now obsolete. In 1997, Section 430.5 was amended (SB 542, Ch. 941 Stats. 1997) to change the deadline for commencing the enforceable restriction process from December 15 to October 15 thereby providing a permanent solution to the timing problem created with the change in the lien date.

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### **Comments**

**Purpose.** This bill would repeal obsolete Section 401.9 related to the lien date change over from March 1 to January 1 for the 1997-98 fiscal year for certain open space and timberland preserve zone contracts since it is now obsolete.

### **Open-Space Land and Restricted Historical Property - Interest Components** *Revenue and Taxation Code Section 423 and 423.2*

#### **Current Law**

Revenue and Taxation Code Section 423 requires assessors to value property that is enforceably restricted under open-space contract or agricultural conservation easement by a specified capitalization of income method. Subdivision (b)(1) of Section 423 requires the Board to announce by September 1 an interest component that is the arithmetic mean of the most recent 5 years of yield rates for long-term United States government bonds as most recently published by the Federal Reserve Board as of each September 1. The Federal Reserve Board publishes the yield rates on a weekly basis each Monday morning for the previous week.

Similarly, Revenue and Taxation Code Section 439.2 requires assessors to value enforceably restricted historical property by a specified capitalization of income method. Subdivisions (b)(1) and (c)(1) require the Board to announce no later than September 1 of the year preceding the assessment an interest component that is equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board. The Federal Housing Finance Board publishes this rate once a month, usually on the last Tuesday of the month.

#### **Proposed Law**

This bill would amend Revenue And Taxation Codes 423 and 439.5 to specify that the interest component be based upon the most recent yield rate published by the Federal Reserve Board "on September 1" rather than the "most recently published." It would also give the Board until October 1 to calculate, prepare, and mail the announcement.

This bill would also delete obsolete date specific language in Section 423.

#### **Background**

The Federal Reserve Board publishes the yield rates on a weekly basis. Consequently, to use the "most recently published figures" usually gives the Board less than a week to prepare and mail the announcements. The announcement is done via a Letters To Assessors which must first go through an internal review process before it can be released.

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### Comments

1. **Purpose.** The delay of the formal publication of the interest component would give the Board a reasonable amount of time to prepare and mail the announcements. Assessors do not need the information to complete their assessments until January 1. Additionally, since much of the value calculations are now computerized, the urgency to release this information as early as possible no longer exists.
2. **No impact on assessments.** The time period for calculating the interest components remain the same so the resulting assessment values will not be impacted.
3. **Obsolete Language.** Subparagraphs (A) through (E) of Section 423(b)(1) provide for the five-year phase implementation (1993-94 through 1997-98) for the open space lands interest component. Since the implementation phase has been completed, these subparagraphs are now unnecessary.

### Unsecured Roll - Tax Rate

*Revenue and Taxation Code Sections 5098 and 5098.5*

#### Current Law

Revenue and Taxation Code Sections 5098 and 5098.5 would have provided automatic property tax refunds plus interest in the event that a court ruled that the tax rate to apply to property on the unsecured portion of the assessment roll in the first year of Proposition 13 was 1% rather than the prior year's tax rate of 2.67%.

#### Proposed Law

This bill would repeal Sections 5098 and 5098.5 of the Revenue and Taxation Code.

#### Background

Section 12 of Article XIII of the California Constitution provides that the tax rate to be applied to the assessed value of property on the unsecured roll is the rate used for property on the secured roll in the prior fiscal year. Proposition 13 added Article XIII A to the California Constitution of which Section 1(a) established a new maximum ad valorem tax rate of 1%, but the language specified that the provisions applied to *real* property. Section 1(a) of Article XIII A was silent as to the tax rate to be applied to *personal* property, which is often collected on the unsecured roll, and Proposition 13 had not modified Section 12 of Article XIII.

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In implementing Proposition 13 in its first year, the issue arose as to the proper tax rate for property on the unsecured portion of the assessment roll for the 1978-79 fiscal year. Should it be the prior year's secured tax rate as Article XIII, Section 12 specified, which would be the tax rate for the 1977-78 fiscal year, a pre-Proposition 13 rate of about 2.67% or did the new Proposition 13 tax rate of 1% found in Article XIII A, Section 1 apply? In practical application, for the 1978-79 fiscal year, 22 counties used the secured tax rate for the 1977-78 fiscal year and 36 counties used the new Proposition 13 tax rate of 1%.

The issue of the proper tax rate to apply was litigated in *Board of Supervisors of San Diego County v. Gerald J. Lonergan as Auditor and Controller*, and the California Supreme Court ultimately decided the issue on August 14, 1980 (27 Cal.3d 855). The Court found that Section 1(a) of Article XIII A was not applicable to property taxed on the unsecured portion of the assessment roll for the 1978–79 fiscal year. Taxes on unsecured property, both real and personal, were to be assessed at the prior year's rate for the secured roll as provided by Article XIII, Section 12 of the Constitution.

During the time this matter was still unsettled, legislation was enacted adding Revenue and Taxation Code Sections 5098 and 5098.5 to provide automatic refunds in the event the court ruled that the proper tax rate was the reduced Proposition 13 tax rate of 1%. Taxpayers in counties that paid taxes based on the higher tax rate would not need to file a claim for refund and interest on the extra taxes paid would be included in the refund amount. (AB 1973, Ch. 60, Stats. 1980, in effect April 11, 1980) However, in accordance with the decision, refunds were not necessary.

### Comments

**Purpose.** These sections of law were rendered obsolete by the California Supreme Court decision in *Board of Supervisors of San Diego County v. Gerald J. Lonergan* on August 14, 1980 (27 Cal.3d 855) and may be repealed.

### Miscellaneous Technical-Housekeeping Provisions

1. **Cross Reference Error.** This bill would amend Section 218 of the Revenue and Taxation Code to correct a cross reference error to Section 61. Chapter 388 of the Statutes of 1996 relettered subdivisions (e), (f), (g), (h), and (i) of Section 61 to (f), (g), (h), (i), and (j) respectively. Section 218 contains a cross reference to relettered subdivision (h) of Section 61. Therefore, Revenue and Taxation Code Section 218 should be amended to change the code cross-reference from Section 61(h) to Section 61(i).
2. **Executive Director.** This bill would replace "Executive Secretary" with "Executive Director" to reflect the current title. §155, §1841, §1609.5

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**COST ESTIMATE**

The Board would incur some minor absorbable costs in informing and advising local county assessors, the public, and staff of the law changes.

**REVENUE ESTIMATE**

It is estimated that the amendment to Section 69.5 would result in a revenue loss of less than \$100,000 per year. The remaining provisions of this bill have no revenue impact.

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